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ALEXANDER L. STEVAS,
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82-607
No.

IN THE

Supreme Court of the United States

October Term, 1982

RICHARD STEPHEN DUNN,
Petitioner

v.

NATIONAL RAILROAD PASSENGER CORPORATION,
a/k/a AMTRAK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does a federal court have the power to enjoin a state court proceeding, pursuant to the relitigation exception of the Anti-Injunction Act, when a state court has already decided, in the case before it, that the validity of a release is a jury issue and that plaintiff is not relitigating an F. E. L. A. claim settled by the parties in a prior federal court proceeding?

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OPINIONS BELOW

No opinion was filed by the United States District Court for the Eastern District of Pennsylvania. A copy of the Order of November 25, 1981 appears at Appendix A1.

No opinion was filed by the United States Court of Appeals for the Third Circuit. A copy of its Order of June 17, 1982 appears at Appendix A2, and a copy of the Order of July 12, 1982 denying the Petition for Rehearing en Banc appears at Appendix A4.

These Orders have not been reported.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The Judgment Order of the United States Court of Appeals for the Third Circuit was entered on June 17, 1982 (Appendix A2), and the Petition for Rehearing was denied by Order entered July 12, 1982 (Appendix A4).

The jurisdiction of the Supreme Court is invoked under 28 U. S. C. § 1254(1) (1966).

The basis for federal jurisdiction of the original case in the United States District Court for the Eastern District of Pennsylvania was the Federal Employers' Liability Act, 45 U. S. C. § 51 *et seq.* (1908).

The basis for the litigation presently pending is the Federal Anti-Injunction Act, 28 U. S. C. § 2283 (1948).

STATUTE INVOLVED

This case involves the application of the Federal Anti-Injunction Act, 28 U. S. C. § 2283 (1948) which reads as follows:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

Plaintiff complains that the Federal Court has improperly denied him his right to a jury trial in a state court, in violation of his rights to due process and equal protection under the United States Constitution and the Constitution of the Commonwealth of Pennsylvania.

As relief, plaintiff seeks to be relieved of the injunction barring him from proceeding with his suit in the Pennsylvania state court; the Pennsylvania state court having already decided that a jury issue was raised by the pleadings (A5).

STATEMENT OF FACTS

I. The Injunction

The original case brought in the United States District Court for the Eastern District of Pennsylvania was under the Federal Employer's Liability Act, and was settled during trial. At the time of the settlement a record was made that an additional sum of money had been offered by the railroad to the plaintiff for a resignation.

The plaintiff refused this additional offer because the railroad had stated that he could return to work if he so desired. When plaintiff applied to return to work he was rejected by the railroad, and plaintiff brought suit in the state court. The railroad filed an Answer to the Complaint setting up the Release as New Matter, and plaintiff filed a Reply alleging fraud, accident, or mutual mistake.

The railroad filed a Motion in the state court for Summary Judgment on the same ground which it later used to obtain the injunction in the federal court. The Motion for Summary Judgment was denied by the state court (A5). Thereupon, the railroad returned to the trial judge in the United States District Court for the Eastern District of Pennsylvania, and requested an injunction prohibiting the plaintiff from proceeding with his state court action. This injunction was granted without an opinion.

The Court of Appeals for the Third Circuit affirmed the lower court, without argument, and without an opinion, and subsequently it refused a Rehearing.

II. Status of the Case in the State Court

The status of this case in the state court is that the case there is at issue and on the trial list. When it shall be called to trial, the plaintiff will not be able to proceed

to trial without putting himself in jeopardy of contempt of the Order by the federal court, because of the injunction which has been issued by the United States District Court, and sustained by the Court of Appeals for the Third Circuit.

III. Plaintiff's Complaint

It is the contention of the plaintiff that the United States District Court for the Eastern District of Pennsylvania, and the Court of Appeals for the Third Circuit, violated the Anti-Injunction Act in granting an injunction to the railroad prohibiting the plaintiff from proceeding with his case in the state court, when the state court had already decided that a jury issue was raised by the pleadings.

Under these circumstances, the plaintiff, although he has a valid action pending in the state court, which has decided that a jury issue is raised by the pleadings (A-5), is in jeopardy of being held in contempt by the United States District Court for the Eastern District of Pennsylvania, which prohibited him from proceeding with his cause of action in the state court.

The issue of the validity of the release was raised in the state court, which decided that the validity of the release was a question for the jury (A5). This is an entirely different issue than the one litigated in the federal court, which was basically a negligence case being tried under the Federal Employers' Liability Act. Although the state court has decided that plaintiff has a valid cause of action, it may be dismissed because of the injunction by the Federal Court prohibiting plaintiff from proceeding with his case.

REASONS FOR GRANTING ISSUANCE OF THE WRIT

This Court should grant a Writ of Certiorari because an issue of great importance to the relationship between the federal court and the state court of Pennsylvania is involved. The decision by the United States District Court for the Eastern District of Pennsylvania, and by the Court of Appeals for the Third Circuit, is in conflict with the decisions of this Honorable Court on the same subject, and, in fact, are in conflict with other decisions of the Third Circuit.

a. The Decisions of the Court of Appeals Are Inconsistent With the Decisions of This Honorable Court and Its Own Precedent

The decision of the United States District Court for the Eastern District of Pennsylvania, and of the Court of Appeals for the Third Circuit, are in direct conflict with the Anti-Injunction Act, 28 U. S. C. § 2283 (1948), and the decisions of this Honorable Court and the decisions of other courts of appeals on the same matter. *Atlantic Coastline Railroad v. Brotherhood of Locomotive Engineers*, 398 U. S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970); *Amalgamated Clothing Workers v. Richman*, 348 U. S. 452, 75 S. Ct. 452 (1955); *Lamb v. Kiroff*, 549 F. 2d 1052 (6th Cir. 1977); *Re Glenn Turner*, 521 F. 2d 775 (3rd Cir. 1975).

On its face, the Anti-Injunction Act is an absolute prohibition against the federal court enjoining a proceeding before a state court, unless the case falls within one of three specifically defined exceptions. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Engineers*, 398 U. S. 281, 286; 90 S. Ct. 1739, 1743, 26 L. Ed. 2d 234 (1970).

The United States District Court enjoined the plaintiff from proceeding with the state court suit, without any opinion, but it may be concluded from the record of the argument before the court that the judge decided that the reporting of the case as settled, and the filing of the stipulation to dismiss, was tantamount to a judgment, which required protection from proceeding before a state court.

b. There Was No Judgment

It is the position of the plaintiff that no judgment, within the meaning of the Anti-Injunction Act, had ever been entered. The real issue is whether the cause of action in the state court is the same as that in the federal court. The two causes of action are, in fact, not the same because the case before the federal court involved only the liability of the railroad for an alleged negligent injury to the plaintiff, while the case before the state court raised the question as to the validity of the release. The state court has already decided that a jury issue was raised as to the validity of the release.

The order of dismissal entered by the federal court is not tantamount to a judgment of the court to bring it within the relitigation exception of the Act. In defining the word "judgments" in § 2283, some guidance may be found in the Federal Rules of Civil Procedure. Rule 54(a) states that: "judgment as used in these rules includes a decree and any order from which an appeal lies". By this standard it is apparent that no judgment was entered by the court below.

c. The Injunction Is Contrary to the Decisions

The Third Circuit had previously held in *Re Glenn Turner*, 521 F. 2d 775, 779 (3rd Cir. 1975):

The 'Act is an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of the three specifically defined exceptions. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs,* 398 U. S. 281, 286, 90 S. Ct. 1739, 1743, 26 L. Ed. 2d 234 (1970). It applies to injunctions, as in the instant case, directed not at the state court or its officers but at the parties to the litigation. *Id.* at 287, 90 S. Ct. 1739; *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.,* 309 U. S. 4, 9, 60 S. Ct. 215, 84 L. Ed. 447 (1940). It also applies to injunctions, as here, prohibiting judicial executions to enforce collection of a state court judgment. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs, supra,* 398 U. S. at 287, 90 S. Ct. 1739; *Hill v. Martin,* 296 U. S. 393, 403, 56 S. Ct. 278, 80 L. Ed. 293 (1935). Such proceedings are considered supplementary to the main proceeding even when they occur in another court. *Hill v. Martin, supra,* 296 U. S. at 403, 56 S. Ct. 278. Thus, section 2283 bars the instant injunction unless it lies within one of the three specified exceptions which 'should not be enlarged by loose statutory construction'. *Atlantic Coastline R. R. v. Brotherhood of Locomotive Eng'rs, supra,* 398 U. S. at 287, 90 S. Ct. at 1743.

Our analysis will be facilitated by discussing the exceptions in reverse order. We safely may ignore the exception authorizing injunctions 'to protect or effectuate [the court's] judgments' since the district court had entered none. See *Jos. L. Muscarelle, Inc. v. Central Iron Mfg. Co.,* 328 F. 2d 791, 793 (3rd Cir. 1964).

This Honorable Court held in the case of *Amalgamated Clothing Workers v. Richman Bros.*, 348 U. S. 452, 454, 75 S. Ct. 452 (1955):

> This [§ 2283] is not a statute conveying a broad general policy for appropriate *ad hoc* application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions. *Id.* at 455 (brackets supplied).
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> The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and the "gap" complained of is impatience with the appellate process if state courts go wrong. But during more than half of our history Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. *Id.* 456.

CONCLUSION

Plaintiff respectfully petitions this Honorable Court to grant a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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